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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 924

LOREN R. GAJEWSKI and MERVIN A. GAJEWSKI,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY TO RESPONDENT'S "MEMORANDUM"

LOREN R. GAJEWSKI and
MERVIN A. GAJEWSKI
Alexander, North Dakota
Petitioners pro se

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The "jury trial" referred to (Mem. 1) was conducted in 1962 and not 1963 as stated. The verdict was obtained through the denial of certain fundamental constitutional rights and by the perpetration of fraud upon the Court and these Petitioners (R. 1 through 9). Petitioner Mervin A. Gajewski was *not* defended at that trial by counsel.

In the wheat penalty case (Mem. 2), *Gajewski* v. *U. S.*, 327 F.2d 239, a directed verdict was entered on behalf of Petitioner Loren R. Gajewski. *Gajewski* v. *Stevens, Warden*, 346 F.2d 1000, was dismissed because of lack of jurisdiction over the persons as opposed to (Mem. 2). No action under 28 U.S.C. 2201, was ever brought by the Petitioners in the District Court for the District of Minnesota and therefore the instant case does not stem from any action brought in that court as opposed to (Mem. 2).

Contrary to (Mem. 2), the District Court did not dismiss the instant case on grounds of *res judicata*. The dismissal was solely on the ground of lack of jurisdiction to grant the relief sought (R. 11, 12).

The Federal District Courts have jurisdiction over all matters arising under the Constitution and Laws of the United States according to Article III, Sec. 2, Cl. 1 of the Constitution. The District Court Complaint (R. 1 through 9) as amended charges discrimination and violation of certain stated Constitutional rights and specifically alleges fraud upon the Court. It is well settled law that the District Courts have jurisdiction to grant relief from judgments obtained through one or another unlawful or fraudulent means. This jurisdiction has its roots in the British Common Law. It is only the *procedure* whereby this jurisdiction is exercised that is codified in the Federal Rules of Civil Procedure in general and Rules 57, 60 and 82 and 28 U.S.C.A. 2201, all of which provide for the independent action instituted in the District Court for the District of North Dakota and designated "Complaint for Declaratory Judgment, Civil No. 737." (R. 1 through 9). Coram Nobis is only another alternative means of *procedure* whereby relief from a judgment may be obtained *provided* the *jurisdiction* of the Court to *grant such relief already exists*. On argument in the Court be-

low Petitioners showed that coram nobis procedure was inadequate because of the *many fact issues alleged in the complaint which had never been previously adjudicated* and which would require a full trial de novo as provided under Rule 38, F.R.C.P. *Morgan* (Mem. 4) provides no grounds for denial of the Writ of Certiorari, inasmuch as the action of the Court below in considering an independent civil action brought on in the District Court, as a *petition for writ of error coram nobis,* when the complaint and record had *not* been so considered by the District Court. This holding is *without precedent* in any Circuit Court and is a "landmark decision" in the 8th Circuit and is therefore deserving of consideration by this Court, regardless of which party or position ultimately prevails. There is therefore occasion for further review.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

LOREN R. GAJEWSKI and
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Alexander, North Dakota
Petitioners pro se

February, 1967.